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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAZHAR SALEEM and JAGJIT SINGH, individually	:	
and on behalf of all others similarly situated,	:	
	:	<u>ECF CASE</u>
Plaintiffs,	:	
	:	
- against -	:	12 CV 08450 (JMF)
	:	
CORPORATE TRANSPORTATION GROUP, LTD.,	:	MEMORANDUM OF LAW FOR
et al.,	:	MOTION TO STRIKE
	:	<u>UNTIMELY PLAINTIFFS</u>
Defendants.	::	
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MEMORANDUM OF LAW

Defendants respectfully submit this memorandum of law in support of their motion, pursuant to Fed. R. Civ. P. 12(f), for an order striking twenty-four (24) opt-in plaintiffs, identified by name below and in Exhibit A to the Declaration of Margaret C. Thering ("Thering Decl."), for failure to file a Consent to Join the Lawsuit form by August 28, 2013 for the collective Fair Labor Standards Act action, pursuant to Your Honor's June 17, 2013 Order (attached as Exhibit B to Thering Decl.). Pursuant to Your Honor's June 17, 2013 Order, Plaintiffs distributed notices to putative plaintiffs in three different languages (English, Spanish, and Hindi). Putative plaintiffs were given 75 days from the date of Your Honor's June 17, 2013 Order to submit their Consent to Join Lawsuit forms, and Your Honor's June 17, 2013 Order was

clear about this, as it stated: “Consent to Join Lawsuit forms filed after August 28, 2013 will be rejected unless good cause is shown for the delay.”

This is not the only notice putative plaintiffs received about their obligation to opt-in by August 28, 2013 should they wish to join this lawsuit. Plaintiffs’ counsel was permitted to send a reminder notice 30 days before the close of the opt-in period. Plaintiffs’ counsel proposed sending a postcard reminder notice; however, Defendants offered to pay so that the original notice would be re-sent to all putative class members. During a July 15, 2013 court conference, Your Honor granted Defendants’ request that the full notice be re-sent to the potential class members. (The relevant portions of the July 15, 2013 court conference transcript are attached as Exhibit C to the Thering Decl.)

In this case, even though two notices were sent to putative plaintiffs indicating that persons who wished to join the lawsuit had to do so by August 28, 2013, 24 putative plaintiffs did not file their consent forms by that deadline. Mena Michael¹ filed his opt in on October 4, 2013, nearly a month and a half late. American Car Limo Tours filed its consent to join form on September 30, 2013, more than a month after the deadline for joining the lawsuit had passed. King Wah Yu, Anjum Ali,² and Jeetu Multani all opted in nearly a month late, having filed their consent to join forms on September 26, 2013, September 25, 2013, and September 18, 2013, respectively. Other late opt-in plaintiffs include: Buo Xuan Guo (filed on September 10, 2013); Guo Bao Xuam (also filed on September 10, 2013)³; Ahmed Aljahmi (filed on September 9,

¹ assuming a different Mena Michael from the one who opted in on July 7, 2013

² assuming a different Anjum Ali from the one who opted in on November 28, 2012

³ if a different person from the previous person

2013); Lawrence Castille (filed in September 9, 2013); Jing Wang (filed on September 4, 2013); Azid Rias (filed on September 4, 2013); Wazir Mughal (filed on September 4, 2013); Etienne Tc Hitc Hui (filed on August 30, 2013); and Diogenes Pion (filed on August 30, 2013). Additionally, the following plaintiffs all filed their consent forms late on August 29, 2013: I. Jaz Mahboob, Mohammad Shamsoddoha; Sulleyman Issi; Ibrahim Onbasi; Donovan James; Ramadav S. Kenawi; Bayram Onbasi; Gurmail Singh; Asand Fara; and Jose Pinto.

Failure by the tardy opt-in plaintiffs to show good cause for their failure to opt-in to this lawsuit in a timely manner is sufficient grounds to strike the opt-in plaintiffs from the action. *See Ayers v. SGS Control Svcs. Inc.*, Nos. 03 civ 9078, 06 civ 7111, 2007 U.S. Dist. Lexis 76539, *4 (S.D.N.Y. Oct. 9, 2007) (J. Berman); *see also Martin v. Citizens Fin. Group, Inc.*, No. 10-260, 2011 U.S. Dist. Lexis 15379 (E.D. Pa. June 23, 2011); *Hargis v. Raudin McCormick, Inc.*, No. 08-4045-EFM, 2010 U.S. Dist. Lexis 79792 (D. Kan. Aug. 6, 2010); *Moya v. Pilgrim's Pride Corp.*, No. 06-1249, 2006 U.S. Dist. Lexis 87150 (E.D. Pa. Nov. 30, 2006). The 24 plaintiffs listed above who all failed to file a Consent to Join the Lawsuit form with the Southern District of New York by August 28, 2013 should be dismissed from this lawsuit, or at the very least, required to show "good cause" for their failure to join the lawsuit in a timely manner, in accordance with Your Honor's instructions.

Respectfully Submitted,

Dated: October 4, 2013

EPSTEIN BECKER & GREEN, P.C.

/S MARGARET THERING

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